

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF FINAL RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the section 6 of An Act To prescribe administrative procedures for the District of Columbia government, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl. And 2019 Supp.)), section 101(g) of the Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code §§ 25-211(b) and (c) (2012 Repl. & 2019 Supp.)), and Mayor’s Order 2001-96, dated June 28, 2001, as amended by Mayor’s Order 2001-102, dated July 23, 2001, hereby adopts, by final rulemaking, amendments to Chapter 7 (General Operating Requirements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR). These final rules were adopted by the Board on August 3, 2022, by a vote of six (6) to zero (0).

This final rulemaking modifies the Metropolitan Police Department Reimbursable Detail Subsidy Program (RDO Subsidy Program) by:

1. Restoring the hours of eligibility for obtaining reimbursement for RDO services to the pre-COVID-19 pandemic hours of 11:30 p.m. to 5:00 a.m., Sunday through Saturday;
2. Restoring the hours of eligibility for obtaining reimbursement for RDO services for temporary license holders or those approved for a one-day substantial change permit to the pre-COVID-19 pandemic hours of twenty-four (24) hours a day; and
3. Including the DC Main Streets Program on the list of entities eligible for participation in the RDO Subsidy Program, thus allowing reimbursement in accordance with 23 DCMR § 718.

BACKGROUND

Since the first confirmed case of COVID-19 in the District of Columbia, Mayor Bowser has taken deliberate steps to protect District residents and its visitors. On March 11, 2020, Mayor Bowser declared a Public Health Emergency and Public Emergency in the District, and in turn, instituted a range of COVID-19-related restrictions for bars and restaurants. *See* Mayor’s Orders 2020-045 and 2020-046 (March 11, 2020), 67 DCR 2956 and 2961. Similarly, the Board has taken a series of steps to address ABC-licensed establishments’ operations during the pandemic so that they could continue to operate while at the same time protecting their patrons’ health and safety. One such action that the Board took was to reduce the hours of eligibility for reimbursement of RDO services in light of ABC-licensed establishments’ reduced operations. *See MPD Reimbursable Detail Subsidy Program Hours of Eligibility Notice of Emergency Rulemaking*, adopted on November 4, 2020 [SUPERSEDED]; and *MPD Reimbursement Detail Subsidy Program Hours of Eligibility Notice of Second Emergency Rulemaking*, adopted on February 24, 2021, 68 DCR 5713 - 5716 (May 28, 2021).

As a result of the declining COVID-19 cases, Mayor Bowser announced that as of 5:00 a.m. on May 21, 2021, restaurants and taverns were permitted to operate at one hundred percent (100%)

of their occupancy load without restrictions as to time or activities. See Mayor's Order 2021-069, dated May 18, 2021, 68 DCR 5480 (May 21, 2021). Mayor's Order 2021-069 further provided that effective 5:00 a.m. on June 11, 2021, the remaining classes of on-premises retailers would be permitted to operate at full capacity without restrictions as to hours of eligibility or activities.

Recognizing that ABC-establishments would return to pre-COVID-19 operations, and especially with the ensuing warmer summer months, the Board adopted the *MPD Reimbursable Detail Subsidy Program Hours of Eligibility Notice of Third Emergency Rulemaking* on May 26, 2021, which reinstated the pre-COVID full hours of eligibility for reimbursement for RDO services (e.g., 11:30 p.m. to 5:00 a.m., Sunday through Saturday), effective July 1, 2021. This third emergency rulemaking also amended 23 DCMR § 718.1 to include the DC Main Streets Program as a recognized entity eligible for participation in the RDO Subsidy Program. See 68 DCR 6852 (July 9, 2021) [SUPERSEDED].

After the adoption of the third emergency rulemaking, the Board determined that not only was emergency action necessary, but also that allowing the DC Main Streets Program to participate in the RDO program warranted permanent adoption. As such, the Board adopted the *MPD Reimbursable Detail Subsidy Program Hours of Eligibility Notice of Fourth Emergency and Proposed Rulemaking* for purposes of taking the steps necessary to adopt the rules on a permanent basis. The fourth emergency and proposed rulemaking superseded the third emergency rules the Board adopted on May 26, 2021, and expired on October 14, 2021.

The fourth emergency and proposed rulemaking was published in the *D.C. Register* for public notice and comment on July 16, 2021, at 68 DCR 7062. The Board held a public hearing on August 11, 2021. No one appeared to testify at the hearing and no comments were submitted. The thirty (30) day comment period ended on August 16, 2021, without comment from the public.

In the interest of maintaining the welfare, public safety, and health of the community while the proposed rulemaking is under consideration by the Council of the District of Columbia (Council), the Board took additional emergency action on October 6, 2021, by adopting the *MPD Reimbursement Detail Subsidy Program Hours of Eligibility Notice of Fifth Emergency Rulemaking*, by a vote of six (6) to zero (0). This rulemaking superseded the third emergency rules the Board adopted on May 26, 2021, and expired February 3, 2022. Although these emergency rules were not published in the *D.C. Register*, the rules were posted to the Alcoholic Beverage Regulation Administration's website on October 8, 2021.

On February 2, 2022, the Board adopted the *MPD Reimbursement Detail Subsidy Program Hours of Eligibility Notice of Sixth Emergency Rulemaking*, by a vote of six (6) to zero (0) to maintain the emergency rules. These emergency rules superseded those adopted by the Board on October 6, 2021, and expired on June 2, 2022. Although these emergency rules were not published in the *D.C. Register*, the rules were posted to the Alcoholic Beverage Regulation Administration's website on February 4, 2022.

In order to ensure that the proposed rules do not expire while the rulemaking is undergoing Council review, the Board found it necessary to again take emergency action to preserve the health, safety, and welfare of the public. Thus, on May 25, 2022, the Board adopted the *MPD Reimbursement*

Detail Subsidy Program Hours of Eligibility Notice of Seventh Emergency Rulemaking, by a vote of six (6) to zero (0). The emergency rules superseded those adopted by the Board on February 2, 2022. They shall remain in effect for no longer than one hundred twenty (120) days from their effective date, expiring on September 22, 2022, unless superseded. Although these emergency rules were not published in the *D.C. Register*, the rules were posted to the Alcoholic Beverage Regulation Administration’s website on May 27, 2022.

Pursuant to D.C. Official Code § 25-211(b)(2), the emergency and proposed rules were transmitted to the Council of the District of Columbia (Council), for a ninety (90) day period of Council review on September 15, 2021. Proposed Resolution 24-0679, the “Metropolitan Police Department Reimbursable Detail Subsidy Program Hours of Eligibility Approval Resolution of 2022”, was introduced by Chairman Mendelson, at the request of the Mayor, on April 4, 2022, and referred to the Committee on April 5, 2022. The proposed rules were approved by Council Resolution, R24-514 and adopted by the Council at its June 28, 2022, legislative meeting. These final rules were adopted by the Board on August 3, 2022, on a vote of six (6) to zero (0). In accordance with D.C. Official Code § 25-211(d), these final rules will take effect five (5) days after they are published in the *D.C. Register* and will supersede any previously adopted emergency rulemaking.

Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 718, REIMBURSABLE DETAIL SUBSIDY PROGRAM, is amended as follows:

Subsection 718.1 is amended to read as follows:

718.1 This section sets forth the procedures for receiving reimbursement from ABRA under the subsidy program for monies paid to the Metropolitan Police Department (MPD) by licensees for the hiring of MPD officers to work a reimbursable detail. A licensee, a group of licensees, a Business Improvement District on behalf of licensees, or a DC Main Streets Program on behalf of licensees, may enter into an agreement with MPD to provide for reimbursable detail and are eligible for reimbursement under the subsidy program. This section shall apply only to the extent that:

- (a) Funds are appropriated for the subsidy program; and
- (b) ABRA has sufficient funds allocated for this program remaining to reimburse MPD for costs incurred by licensees for MPD officers working reimbursable details.

Subsection 718.2 is amended to read as follows:

718.2 ABRA will reimburse MPD for a percentage, as published in the *D.C. Register*, of the total cost of invoices submitted by MPD to cover the costs incurred by licensees for MPD officers working reimbursable details on Sunday through Saturday nights. Effective July 1, 2021, the hours eligible for reimbursement for on-premises retailer

licensees shall be 11:30 p.m. to 5:00 a.m. Prior to July 1, 2021, the hours of eligibility shall be 2 p.m. to 2 a.m., Sunday through Saturday.

A new Subsection 718.3 is added to read as follows:

718.3 Effective July 1, 2021, ABRA will also reimburse MPD a percentage, as published in the *D.C. Register*, of the total costs of invoices submitted by MPD to cover the costs incurred for outdoor special events where the licensee has been approved for a one-day substantial change license or temporary license. The hours eligible for an outdoor special event operating under a one-day substantial change license, a temporary license, or a pub crawl event operating under a pub crawl license shall be twenty-four (24) hours a day.

Existing Subsections 718.3 through 718.6 are renumbered 718.4 through 718.7.